

IN THE MATTER OF	:	BEFORE THE
<b>LISA (WILLIAMS) COOCH</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 12-017C

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### DECISION AND ORDER

On April 1, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Lisa (Williams) Cooch (Petitioner), for a Kennel with 11 or more dogs in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.N.30 of the Howard County Zoning Regulations (HCZR).

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Lisa Cooch testified in support of the petition. No one appeared in opposition to the petition.

### FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the west side of Carrs

Mill Road about 1,110 feet south of MD 144 and lies in the Fourth Election District. It is referenced as Tax Map 8, Grid 13, Parcel 210 and is also known as 16171 Carrs Mill Road (the Property).

2. Property Description. The irregularly-shaped Property fronts about 370 feet on the west side of Carrs Mill Road. It is improved with a dwelling located about 128 feet from the front property line. An above ground swimming pool is situated behind the dwelling and a barn is sited to the southwest of the dwelling. A 12'x12' shed lies to the southeast of the barn.

A split-rail fence runs along the Property frontage. A gate opens onto a gravel driveway located about 160 feet from the southeast property corner to provide access to a parking area west of the dwelling. There is a 12'x16' shed near the northeast corner of the dwelling and a 10'x10' shed west of the driveway. A detached garage is sited some 20 feet from the northwest corner of the dwelling. Behind this garage is a fenced Kennel. A loafing shed for sheltering horses is situated beyond the north side of the Kennel fence.

The Kennel is set back more than 170 feet from the Carrs Mill right-of-way (ROW). Beginning at the northeast property corner, the split rail fence continues along the north lot line to end near the front of the garage. The fence continues to the south, where it intersects with a wooded privacy fence, which runs from the garage and along the length of the Kennel. The Kennel is enclosed with a short wire fence on its southwest and east sides. Between the garage and the north property line is a stand of mature trees.

The Property is level in the front portion and drops toward the rear. Beyond the barn and Kennel, the topography drops significantly toward Cattail Creek.

3. Vicinal Properties. All properties to the east, west and south are zoned RC-DEO and are each improved with a single-family detached dwelling.

4. General Plan. PlanHOWARD 2030 designates the Property as "Rural Resource" on the Designated Place Types Map.

5. Water and Sewer. The Property is served by private water and septic facilities.

6. Roads. Carrs Mill Road has two travel lanes and about 22 feet of paving width within a variable ROW. The posted speed limit is 30 MPH. According to Department of Public Works data, the traffic volume on Carrs Mill Road south of MD 144 was 660 average daily trips as of January 1999.

7. The Proposed Conditional Use. Petitioner is seeking retroactive approval to operate a Kennel for 11 or more dogs. The revised petition states the Property is currently used to house the owner's personal dogs and for occasional breeding, which is both an indoor and outdoor activity. The Kennel consists of several dog houses and a privacy fence. The TSR states these doghouses are about nine square feet in size and four feet in height lie within the fenced area. When the dogs are bred to be sold, the hours of operation are 10:00 a.m. to 7:00 p.m., by appointment only with one appointment at a time. There are no employees and the owners used two standard size trucks as part of the Kennel.

Dogs will be contained in the outdoor Kennel, which the Conditional Use Plan depicts as a 48 feet wide by 61 feet deep fenced area. According to the Technical Staff Report (TSR), the Kennel is 140 feet from the north lot line, not the 145-foot distance shown on the Conditional

Use Plan, and about 227 feet from the dwelling on the northern Parcel 205 based on Howard County Pictometry aerial photographs.<sup>1</sup>

8. Ms. Cooch testified that she does not intend to board animals. Her dogs are small breeds.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

##### **A. Harmony with the General Plan**

Section 131.B.1 requires me to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in PlanHOWARD2030 for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

As a starting point, dog kennels are commonly found in rural areas and are presumptively considered compatible with RC zoned residential land uses. The proposed Kennel is located on a local road, which is appropriate for a Kennel that will not board animals and have only occasional sales by appointment. Due to its location behind the house, the outside

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<sup>1</sup> The Conditional Use Plan misidentifies this property as Parcel 203.

Kennel is not visible from the public road. The Kennel is a reasonable size, 48' by 61' and is fenced in. Several doghouses provide shelter. Setbacks are discussed below.

Based on the evidence of record, the Hearing Examiner concludes the Kennel is harmonious with PlanHoward2030.

## **2. Adverse Effect**

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

Any assessment of a conditional use under these criteria or, as in this case, an alteration in the approved use, initially recognizes the potential for virtually every human activity to have adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed Kennel conditional use would have adverse effects in an RC District. The proper question is whether there are facts and circumstances showing that the conditional use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioner has met its burden of production and persuasion under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a kennel in an RC Zoning District.

**a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.**

The petition states there will be infrequent noise from the dogs, and that barking dogs will be controlled with a barking collar. The petition also states waste will be cleaned every day. The Petitioner owns small dogs and only small dogs will be bred. No outdoor lighting is proposed. The petition complies with Section 131.N.30.B.2.a.

**b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.**

The Kennel is located behind the dwelling. The doghouses in the fenced area are modest in size and area and located within Kennel fencing, which is set back from lot lines at greater distance than required by the Zoning Regulations. The Kennel conditional use complies with Section 131.N.30.B.2.b.

**c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

The Zoning Regulations do not establish specific parking requirements for kennels. Given that only one customer will visit the Kennel at any time, the parking area will be adequate to accommodate two residential spaces and at least two Kennel spaces. The petition accords with Section 131.N.30.B.2.c.

**d. Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The driveway appears to provide safe access, with adequate sight distance. The petition accords with Section 131.N.30.B.2.d.

### **III. Specific Criteria for Kennels and Pet Grooming Establishments (Section 131.N.30)**

**a. For kennels housing or training eleven or more animals at one time, the following requirements shall apply:**

**(1) Minimum lot size..... 5 acres**

The Property is 5.0 acres in size, in accordance with Section 131.N.30.a.(1).

**(2) Minimum setback for outside pens and runs from any lot line ... 200 feet**

**(3) Minimum structure setback**

**(a) From public street right-of-way ..... 100 feet**

**(b) From any other lot line ..... 200 feet**

**(4) The Hearing Authority may reduce the 200 foot setback from lot lines for structures and outside pens or runs to a distance no less than 100 feet if it finds that the setback reduction will not adversely affect neighboring properties due to visual impact, noise, dust, odors or other causes, and that the pen, run or structure will be located at least 200 feet from existing dwellings on different lots. Outside pens and runs for which this setback reduction is approved shall be enclosed by solid fences or walls.**

According to the TSR, no structures are directly involved with the outdoor Kennel use.

The dwelling is more than 100 feet from the Carrs Mill Road ROW and about 185 feet from the

north lot line. The TSR also explains that the dwelling and outside Kennel area lie about 140 feet from the northern lot line and about 227 feet from the dwelling on Parcel 205. The Hearing Examiner finds the setback reduction authorized pursuant to Section 131.N.30.a.(b)(4) will not adversely affect neighboring properties, given the mature stand of trees near the Kennel and garage and a privacy fence along the Kennel's north side. The Kennel also sits back well to the rear of the dwelling on Parcel 205.

**b. For pet grooming establishments not located completely within a residence, or for kennels housing or training no more than ten animals at any one time, the following requirements shall apply:**

- (1) Minimum lot size..... 3 acre**
- (2) Minimum setback for outside pens and runs from any lot line  
..... 100 feet**
- (3) Minimum structure setback:**
  - (a) From public street right-of-way..... 75 feet**
  - (b) From any other lot line..... 30 feet**

Section 131.N.30.(b) does not apply because no pet grooming establishment is proposed and more than ten dogs will be boarded or trained at the kennel.

**c. For pet grooming establishments in which all business activities take place within a residence, the minimum lot size shall be one acre.**

Section 131.N.30.(c) does not apply because no pet grooming establishment is proposed.

**d. All parking areas and outside pens and runs, and as appropriate, all buildings shall be screened by landscaping or other suitable means from adjoining properties and public street rights-of-ways.**

The pens and parking area are screened by landscaping and are not visible from the public street ROW, in accordance with Section 131.N.30.(d).



**e. Disposal of wastes must be such that odors or other emissions are not perceptible at lot lines;**

The petition states that waste will be cleaned several times a day, in accordance with Section 131.N.30.a.).

**f. A kennel for the boarding of dogs or cats for which a fee is charged must have frontage on and direct access to a collector or arterial road designated in the General Plan.**

No boarding is proposed. This section does not apply.

**ORDER**


Based upon the foregoing, it is this **11<sup>th</sup> day of April 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Lisa (Williams) Cooch Petitioners, for a Conditional Use for a Dog Kennel is hereby **APPROVED**.

Provided however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the Conditional Use for a Kennel as described in the petition and as depicted on the Conditional Use Plan submitted on January 15, 2013, and not to any other activities, uses, or structures on the Property.
2. The Petitioner shall comply with all agency comments.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



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Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.